Supreme Court, U.S.
FILED
JUN 30 2004
OFFICE OF THE CLERK

No. 03-1599

In The
Supreme Court of the United States

CITY OF MESA,

Petitioner,

v.

CRAIG W. PETERSEN,

Respondent.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI BY CITY OF MESA

THOMAS A. BENAVIDEZ*
HOCHULI & BENAVIDEZ, P.C.
220 E. Wetmore Rd., Suite 110
Tucson, Arizona 85705
(520) 623-1461

**Counsel of Record*

Attorney for Amicus Curiae Drexel Heights Fire District
Attorney for Amicus Curiae Northwest Fire District

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT IN SUPPORT OF GRANTING THE PETITION FOR WRIT OF CERTIORARI 3

I. THE NATURE OF A FIREFIGHTER'S WORK POSES SUCH A GREAT RISK TO THE PUBLIC THAT EVEN A SINGLE INSTANCE OF IMPAIRED PERFORMANCE COULD BE DEVASTATING 3

II. THE DECISION OF THE SUPREME COURT OF ARIZONA CONCERNING THE SCOPE OF FOURTH AMENDMENT PROTECTIONS DIRECTLY CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT 7

A. The performance of firefighters' duties depends just as uniquely on their judgment and dexterity as it does for other government employees for whom random drug testing has been held constitutional by this Court 8

B. A real and substantial risk exists to justify random drug testing regardless of evidence of drug use among firefighters because the public safety is genuinely in jeopardy if even a single firefighter performs his or her job while impaired 10

III. FIREFIGHTERS HAVE IMMEDIATE ACCESS TO CONTROLLED DRUG SUBSTANCES, THEREBY INCREASING THE RISK OF DANGER TO THE PUBLIC 12

TABLE OF CONTENTS – Continued

Page

IV. PRE-EMPLOYMENT, POST-INCIDENT, AND REASONABLE SUSPICION DRUG TESTING DO NOT ALLEVIATE THE RISK OF HARM TO THE PUBLIC AS EFFECTIVELY AS RANDOM DRUG TESTING 13

V. THE DECISION OF THE SUPREME COURT OF ARIZONA IS IN DIRECT CONFLICT WITH THE DECISIONS OF SEVERAL UNITED STATES COURTS OF APPEALS CONCERNING THE SCOPE OF FOURTH AMENDMENT PROTECTIONS..... 15

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES

Bd. of Educ. Indep. Sch. Dist. No. 92 v. Earls, 536 U.S. 822 (2002) 7

Chandler v. Miller, 520 U.S. 305 (1997) 10

Hatley v. Dept. of the Navy, 164 F.3d 602 (Fed. Cir. 1998) 16

Lovvorn v. Chattanooga, 915 F.2d 1065 (6th Cir. 1990) 15

National Treasury Employees Union v. Van Raab, 489 U.S. 656 (1989) 7, 8, 9, 10, 11

Petersen v. City of Mesa, 83 P.3d 35 (Ariz. 2004) 8, 10, 11, 15, 16

Wilcher v. City of Wilmington, 139 F.3d 366 (3rd Cir. 1998) 16

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Fourth Amendment ..... *passim*

AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI BY CITY OF MESA

Drexel Heights Fire District and Northwest Fire District, political subdivisions and municipal corporations of the State of Arizona, through their Attorney, file this amicus curiae brief in support of Petitioner, City of Mesa. All parties have consented to the filing of this brief on behalf of amicus curiae.[1]

INTEREST OF AMICUS CURIAE

Drexel Heights Fire District and Northwest Fire District are municipal corporations serving large populations in Pima County, Arizona. These municipalities are responsible for protecting the public from employee firefighters who may be under the influence of drugs or alcohol.

This matter requires the Court to assess the contours of the Fourth Amendment's prohibition against suspicionless searches as applied to random drug testing of firefighters. The adjudication of the case before this Court is, therefore, a matter of direct concern to Drexel Heights and Northwest Fire Districts, as well as all other governmental fire protection service providers throughout the country.

[1] Counsel for amicus curiae authored this brief in its entirety. Counsel for a party did not author this brief in whole or in part. No person or entity, other than amicus curiae, made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

It is undisputed that states have a substantial interest in ensuring that their firefighters are in optimum condition and will not endanger the public while performing their jobs. It is also undisputed that the Fourth Amendment to the United States Constitution guarantees individuals the right to be free from unreasonable searches and seizures. However, the Arizona Supreme Court erred in holding that random, suspicionless drug testing of firefighters unreasonably infringes upon their Fourth Amendment rights.

The Arizona Supreme Court erred in failing to recognize the profoundly sensitive and dangerous work engaged in by firefighters and in finding that the City needed to demonstrate an existing drug problem in its fire department to justify random drug testing. Several United States Courts of Appeals have ruled upon the issue and held that suspicionless drug testing of firefighters is permissible. In addition, this Court has held that suspicionless drug testing does not violate the Fourth Amendment in analogous contexts. The Supreme Court of Arizona, in this case, has taken an entirely opposite view.

The limitations imposed on states by the Fourth Amendment to the United States Constitution should be no greater in one jurisdiction than in another. All states should be entitled to the same opportunity to deter and detect alcohol and drug use among firefighters within their respective jurisdictions. Because the Supreme Court of Arizona has ruled that the limits imposed by the Fourth Amendment are greater in Arizona than the limits imposed in other jurisdictions, amicus curiae respectfully

request that this Court grant the petition for writ of certiorari in this case.

ARGUMENT IN SUPPORT OF GRANTING THE PETITION FOR WRIT OF CERTIORARI

I. THE NATURE OF A FIREFIGHTER'S WORK POSES SUCH A GREAT RISK TO THE PUBLIC THAT EVEN A SINGLE INSTANCE OF IMPAIRED PERFORMANCE COULD BE DEVASTATING.

There are job categories for which it is simply too risky to await the appearance of signs of impairment. The nature of firefighters' work is such that the potential harm from employee drug use is so great that the threat of even a single instance of impaired performance could be devastating.

Almost every aspect of a firefighter's job poses a substantial risk to the public's safety and welfare. Upon leaving the station house on a call, a firefighter gets behind the wheel of a vehicle weighing up to 30,000 pounds and drives in excess of the speed limit to reach the scene of an emergency. The operator of the vehicle often weaves in and out of traffic and proceeds through red traffic signals. Even a moment of inattention could lead to a potentially fatal collision.

In addition, like other fire service providers, both Drexel Heights and Northwest Fire Districts conduct their own safety inspections and perform routine maintenance on these heavy emergency vehicles. Should a firefighter be impaired while performing these tasks, the results could be deadly.

Once on the scene of a fire, teams of firefighters are led into burning buildings to extinguish the flames and rescue victims. In many cases, people are trapped inside and have only a few minutes to live before their lungs are filled with smoke. Firefighters must locate victims quickly and ensure that they are brought to safety. This requires not only quick, clear judgment, but also unfaltering physical fitness and agility.

Moreover, firefighters do much more than fight fires. The fire service today provides full service emergency response. Firefighters are trained and equipped with protective equipment to respond to every conceivable type of emergency. For example, firefighters are first to arrive at terrorist bomb incidents, building collapses, medical emergencies, vehicle accidents, elevator emergencies, hazardous material spills, high-angle mountain rescues, swift water rescues and natural disasters.

In addition, Northwest Fire District has an agreement with the Pima County SWAT team. These firefighters are specially trained to respond with law enforcement to dangerous crime scenes and serve as first responders for combat type injuries. In this type of response situation, the holding of the Arizona Supreme Court, in this case, creates a situation in which some of the emergency responders are subject to random drug testing and some are not.[2] If firefighters are performing

[2] Members of the Pima County SWAT team are subject to random drug testing; pursuant to the holding of the Arizona Supreme Court in this case, firefighters are not. In addition, Northwest Fire District has an intergovernmental agreement with the Arizona Air National Guard whose employees are subject to random drug testing.

the same safety-sensitive tasks as other government employees who are subject to random testing, there is no rational justification for prohibiting random drug testing of firefighters.

The clarity of judgment a firefighter must exercise in the performance of his or her duties is almost unparalleled. Approximately 70% of the calls a firefighter responds to are medical emergencies. The victims are often suffering from life-threatening injuries. Upon arrival, a firefighter must immediately decide upon a course of action and set up sophisticated heart monitors, defibrillators, and pulse oximeters. If necessary, the firefighter must establish an airway and perform CPR. A firefighter trained as an Emergency Medical Technician may also be required to perform complicated medical procedures such as tracheotomies. Should a firefighter be impaired while performing any of these tasks, serious injury or death is likely to result.

Even a firefighter's non-emergency duties pose a substantial risk to hundreds of lives. Both Drexel Heights and Northwest Fire Districts conduct arson investigations in conjunction with law enforcement. In addition, both districts are responsible for enforcing the Fire Code throughout their respective jurisdictions. Should a firefighter be impaired during Fire Code inspections, a violation may be overlooked, and the result may be an accident causing serious harm to numerous individuals.

At the station, firefighters spend the majority of their day conducting clean-up and maintenance of facilities,

apparatus and equipment.[3] The efficient performance of these duties is just as critical to protecting the public safety as those performed during an emergency. Firefighters continuously perform safety inspections of all vehicles and equipment. Some of their duties include ensuring that oxygen tanks are in proper working condition, fire hoses are rolled correctly, all batteries are fully charged, and all drug boxes are fully stocked. If any one of these tasks is performed negligently due to a firefighter being impaired, the public will suffer during an emergency.[4]

In addition to the inherent safety risks, an impaired firefighter abuses the public's trust. Firefighters have the power and authority to enter a person's private home during an emergency. An impaired firefighter is more likely to abuse this authority.

Finally, firefighters are often the first responders on the scene at vehicle accidents involving DUI and are required to testify in criminal DUI trials. The public safety could be irreparably damaged if those charged with safeguarding it were, because of their own drug or alcohol use, unsympathetic to the prosecution of drug and alcohol offenders.

Therefore, because firefighters occupy a highly safety-sensitive position, random drug testing is both appropriate

---

[3] On-duty time is also dedicated to providing public education through tours, school demonstrations, and public classes.

[4] Additionally, firefighters spend on-duty time receiving training regarding the proper use of safety and medical equipment including heart monitors and defibrillators. It is critical to the public safety that firefighters be alert and attentive while learning these techniques.

and consistent with the holdings of this Court. *See National Treasury Union v. Van Raab*, 489 U.S. 656 (1989). Amicus curiae respectfully request that this Court grant certiorari and confirm the constitutionality of random, suspicionless drug testing as applied to firefighters.

II. THE DECISION OF THE SUPREME COURT OF ARIZONA CONCERNING THE SCOPE OF FOURTH AMENDMENT PROTECTIONS DIRECTLY CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

Although this Court has never considered the reasonableness of random, suspicionless drug testing of firefighters, this Court has upheld the constitutionality of suspicionless drug testing programs in analogous contexts. The decision of the Supreme Court of Arizona is in direct conflict with those holdings. In fact, despite its assertion to the contrary, the Arizona Supreme Court's opinion seems to hold that suspicionless drug testing constitutes a per se violation of the Fourth Amendment. This holding cannot stand in light of recent decisions by this Court.

As recently as 2002, this Court upheld drug testing of middle and high school students who participated in extracurricular activities. *Bd. of Educ. of Indep. Sch. Dist. No. 92 v. Earls*, 536 U.S. 822 (2002). The testing policy allowed both random testing and testing based on reasonable suspicion. *Id.* at 826. In upholding the random component of the testing, this Court stated that schools have a compelling need to detect drug use among their students *Id.* at 827. The Court then balanced the schools' interest in detecting drug use against the students' expectations of privacy. *Id.* The balance weighed in favor of the schools, and the Court held random testing to be constitutional.

A. The performance of firefighters' duties depends just as uniquely on their judgment and dexterity as it does for other government employees for whom random drug testing has been held constitutional by this Court.

Even more relevant to the case at bar is this Court's holding in *National Treasury Employees Union v. Van Raab*, 489 U.S. 656 (1989). In *Van Raab*, this Court upheld the suspicionless drug testing of United States Customs Service employees who are directly involved in illegal drug interdiction, and of those who carry a firearm. *Id.* at 679. This Court explained, "Our precedents have settled that, in certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting searches without any measure of individualized suspicion." *Id.* at 668.

The Arizona Supreme Court declined to follow the holding in *Von Raab* for several reasons, all of which are immaterial. The Arizona Court reasoned that unlike Customs Service employees, firefighters are not directly involved in drug interdiction, do not carry a firearm, and are not required to use deadly force in the regular course of their duties. In addition, the court stated that firefighters' work environment provides a better opportunity for supervisors to detect drug use and develop reasonable suspicion to conduct a test. Finally, the court noted that while the testing in *Von Raab* was suspicionless, it was not random and therefore resulted in a less intrusive privacy invasion than the one at issue in this case. *Petersen v. City of Mesa*, 83 P.3d 35, 40 (Ariz. 2004).

Amicus curiae do not dispute these differences; however, they contend that the holding in *Von Raab* did not rest upon these factors. In upholding the drug testing of Customs Service employees, this Court stated, "[b]ecause successful performance of their duties depends uniquely on their judgment and dexterity, these employees cannot reasonably expect to keep from the Service personal information that bears directly on their fitness." *Von Raab*, 489 U.S. 656, 672.

The successful performance of firefighters' duties depends just as uniquely on their judgment and dexterity as it does for Customs Service employees who carry firearms. Firefighters must be alert and ready to respond to an emergency at a moment's notice. Not only are they expected to battle huge blazes threatening numerous lives, they are also the first responders on the scene at many accidents.

Moreover, most firefighters are also certified Emergency Medical Technicians or paramedics who must constantly make split-second life and death decisions. The vast majority of calls firefighters respond to are medical emergencies. In these situations, a person's life depends on firefighters' ability to think quickly and clearly, something they would likely be unfit to do if under the influence of drugs or alcohol.

Finally, firefighters must respond to many emergencies involving hazardous materials. These situations pose a danger to scores of people. If not properly contained, a hazardous material spill could cause death or serious injury to literally hundreds, or even thousands, of citizens. The judgment and dexterity needed to respond to such a situation is certainly as great as that required of Customs

Service employees in deciding whether to use a firearm. Therefore, suspicionless drug testing of firefighters should similarly be upheld. Unfortunately, the Supreme Court of Arizona failed to make this connection and, in fact, erroneously applied this Court's precedent throughout its opinion.

B. A real and substantial risk exists to justify random drug testing regardless of evidence of drug use among firefighters because the public safety is genuinely in jeopardy if even a single firefighter performs his or her job while impaired.

In this case, the Supreme Court of Arizona explicitly held that random drug testing could be utilized only if the City had identified a "real and substantial risk." *Petersen*, 83 P.3d at 39. The Arizona Supreme Court substantiated this statement by citing to the opinion of this Court in *Chandler v. Miller*, 520 U.S. 305 (1997). The exact language of that opinion reads, "*Where public safety is not genuinely in jeopardy*, the Fourth Amendment precludes the suspicionless search." *Id.* at 323 (emphasis added).

The Arizona Supreme Court interpreted "real and substantial risk" to mean that the City must show that there has been clear evidence of a drug problem among firefighters in order to show that safety is genuinely in jeopardy. *Petersen*, 83 P.3d at 39. However, this Court has explicitly held that a "real and substantial risk" can be demonstrated even where the testing scheme was not implemented in response to any perceived drug problem when the employees occupy safety-sensitive positions. *Von Raab*, 489 U.S. 656, 673. Therefore, the more reasonable interpretation of "real and substantial risk" refers not to

the probable risk that firefighters are using drugs, but to the risk which would be imposed upon the public if even a single firefighter performed his or her duties while impaired.[5]

The Supreme Court of Arizona also erroneously held that even if a real and substantial risk had been identified, the testing would only be constitutional if the City could show that the program had been effective in deterring and detecting drug use among its firefighters. *Petersen*, 83 P.3d at 41. The Arizona Supreme Court then held that this standard had not been met because the record lacked even a single instance of drug use among firefighters and any evidence of accidents, fatalities, or injuries attributed to drug or alcohol use. *Petersen*, 83 P.3d at 39.

Once again, this conclusion cannot stand because this Court has held that it is this lack of evidence that often demonstrates that a drug testing program is successful and should be continued. *Von Raab*, 489 U.S. at 673. "When the Government's interest lies in deterring highly hazardous conduct, a low incidence of such conduct, far from impugning the validity of the scheme for implementing this interest, is more logically viewed as a hallmark of success." *Von Raab*, 489 U.S. 656, 675.[6]

---

[5] Nonetheless, Drexel Heights adopted the random component of its drug testing program in response to an accident in which the firefighter involved tested positive for marijuana.

[6] Both fire districts have had some positive tests since implementing their random components. In Northwest Fire District, two firefighters tested positive during a random test in 2001, and one tested positive during a random test in 2002. In Drexel Heights Fire District, one positive test was observed during random testing in 1993, 1996, and 1999.

Therefore, because the Supreme Court of Arizona erroneously applied this Court's precedent, amicus curiae respectfully request that this Court grant certiorari and correct the Arizona Court's error.

III. FIREFIGHTERS HAVE IMMEDIATE ACCESS TO CONTROLLED DRUG SUBSTANCES, THEREBY INCREASING THE RISK OF DANGER TO THE PUBLIC.

The substantial risk to the public posed by impaired firefighters is greatly increased due to the fact that these employees have constant and immediate access to controlled drug substances.

In their capacity as Emergency Medical Technicians, firefighters have constant access to commonly abused drugs including morphine and nitrous oxide.[7] Moreover, both Drexel Heights and Northwest Fire Districts are members of the Pima County Hazardous Materials Team. These firefighters are involved in discovering and shutting down methamphetamine labs throughout their jurisdictions, thereby giving them access to this highly hallucinogenic drug.

Access to these drugs means that the chances of a firefighter abusing them and endangering the public is

---

[7] The drug boxes carried on both districts' fire engines and ambulances contain adenosine, albuterol sulfate, aspirin, atropine sulfate, calcium chloride, charcoal, dextrose, diazepam, diphenhydramine, dopamine, epinephrine, furosemide, glucagon, ipratroprium bromide, lidocaine, magnesium sulfate, methylpredinsolone, morphine, naloxone, nitroglycerin, nitrous oxide, oxytocin, phenylephrine, thiamine, and verapamil.

greatly increased. In 1993, Drexel Heights Fire District observed this danger first-hand when the then-current fire chief tested positive for morphine during a random test. It was later determined that the chief had been obtaining morphine from the drug boxes carried on district vehicles. He would remove the morphine ampules, break them open, remove the drug and replace it with normal saline, then replace the tampered ampule in the drug box.

This incident demonstrates that there is a "real and substantial risk" of drug use by firefighters. Therefore, amicus curiae respectfully request that this Court grant certiorari and validate the constitutionality of random, suspicionless drug testing in this context.

IV. PRE-EMPLOYMENT, POST-INCIDENT AND REASONABLE SUSPICION DRUG TESTING DO NOT ALLEVIATE THE RISK OF HARM TO THE PUBLIC AS EFFICIENTLY AS RANDOM DRUG TESTING.

Drexel Heights and Northwest Fire Districts each promulgate a drug testing program composed of four (4) components: pre-employment, post-incident, reasonable suspicion, and random. In the case at bar, the decision of the Supreme Court of Arizona suggests that the first three components of this testing program are sufficient to address any risk of harm to the public resulting from drug and alcohol use among firefighters. However, this argument overlooks many factors which make random testing particularly effective.

The use of pre-employment drug testing ensures that firefighters have not used drugs or alcohol immediately prior to being hired. However, this testing procedure does

nothing to prevent drug and alcohol use among firefighters beyond the hiring stage.

Reasonable suspicion is inherently inefficient as a drug testing procedure. While some individuals under the influence of drugs or alcohol may display signs and symptoms, many individuals are able to successfully hide their impairment from others. Because these individuals know that they are unlikely to invoke suspicion, they do not fear being caught and are not deterred from use. Moreover, the fact that many individuals are able to conceal their drug abuse does not mean that they are able to function safely.

Finally, post-incident drug testing addresses the risk of drug and alcohol impairment only after the public has already been harmed. It establishes a system in which nothing is done to prevent the first accident, but only subsequent accidents. In fact, it was this realization, following a potentially deadly accident, that led Drexel Heights to adopt the random component of its drug testing policy.

In 1992, a fire captain parked a fire engine weighing approximately 30,000 pounds in a parking lot and left to do some shopping for dinner. Unfortunately, he failed to set the parking break or deploy wheel chocks. While he was in the store, the truck rolled more than 50 feet into a culvert commonly played in by children. Fortunately, no children were present on this particular day, but the truck sustained over $24,000.00 in damage. Following the incident, the driver was subjected to a urinalysis and tested positive for drugs. Of course, this was only after he made a potentially deadly mistake. A random drug testing program would have likely detected his drug use prior to any accident, or deterred him from using drugs at all. The

notion that a public fire protection provider may not act to prevent a tragedy until it actually arises is both dangerous and unreasonable.

Therefore, amicus curiae respectfully urge this Court to grant certiorari in this matter and uphold random, suspicionless drug testing of firefighters.

V. THE DECISION OF THE SUPREME COURT OF ARIZONA IS IN DIRECT CONFLICT WITH THE DECISIONS OF SEVERAL UNITED STATES COURTS OF APPEALS CONCERNING THE SCOPE OF FOURTH AMENDMENT PROTECTIONS.

The Arizona Supreme Court, in this case, explicitly held that the random, suspicionless drug testing of firefighters is unreasonable and therefore violates the Fourth Amendment to the United States Constitution. *Petersen*, 83 P.3d at 37. This holding is in direct conflict with the decisions of several United States Courts of Appeals.

The Sixth Circuit was the first to specifically address the constitutionality of drug testing as applied to firefighters. In *Lovvorn v. City of Chattanooga*, three firefighters filed an action against their public employer challenging the constitutionality of proposed mandatory urinalysis tests. 915 F.2d 1065 (6th Cir. 1990). In upholding the constitutionality of the tests, the court stated that "the district court's conclusion that an employer must require a reasonable and particularized suspicion as a precondition to any such testing must perforce fail." *Id.* at 1067.

In 1997, the Third Circuit was posed with a slightly different question regarding the constitutionality of drug

testing as applied to firefighters. In *Wilcher v. City of Wilmington*, a class of firefighters and a union challenged the methods by which their employer conducted random drug tests. 139 F.3d 366 (3rd Cir. 1998). Despite the invasion of privacy inherent in the direct observation of urination utilized by the employer in conducting its tests, the court held that the tests were constitutional and firefighters' Fourth Amendment rights had not been violated. *Id.* at 378.

Finally, in 1998, the Court of Appeals for the Federal Circuit decided a case almost directly on point with the case before this Court. In that case, a civilian firefighter employed by the Navy was terminated when he refused to submit to a random drug test. *Hatley v. Dept. of the Navy*, 164 F.3d 602 (Fed. Cir. 1998). The firefighter then filed suit challenging the constitutionality of the tests. *Id.* In finding the tests to be constitutional, the court explicitly held that "the government's compelling interest in keeping its firefighters free of drugs outweighs the expectation of privacy of these employees." *Id.* at 604.

In contrast to all of the preceding rulings, the Supreme Court of Arizona has deemed random, suspicionless drug testing of firefighters to be unconstitutional based on the Fourth Amendment. *Petersen*, 83 P.3d at 37. The result of this holding is that firefighters in Arizona are now entitled to more protection based on the Fourth Amendment than firefighters in other jurisdictions. As the Fourth Amendment should not have different meanings in different states, amicus curiae respectfully request that the petition for certiorari be granted.

CONCLUSION

The successful performance of firefighters' duties depends uniquely on their judgment and dexterity. As the first responders on the scene in a wide range of emergencies, firefighters are consistently responsible for making life and death decisions.

Several Courts of Appeals have recognized that the safety-sensitive nature of the profession creates a substantial need to protect the public from firefighters who may be under the influence of drugs or alcohol. All of these courts have upheld the random drug testing of firefighters against Fourth Amendment challenges. Moreover, this Court has upheld suspicionless drug testing in analogous contexts. In sharp contrast, the Supreme Court of Arizona, in this case, held that random drug testing of firefighters is unconstitutional.

Amicus curiae respectfully urge this Court to grant the petition for certiorari in this case and clarify the scope of protections provided by the Fourth Amendment as applied to the drug testing of firefighters.

Respectfully submitted this 30th day of June, 2004.

THOMAS A. BENAVIDEZ*
HOCHULI & BENAVIDEZ, P.C.
220 E. Wetmore Rd., Suite 110
Tucson, Arizona 85705
(520) 623-1461

*Counsel of Record

Attorney for Amicus Curiae
Drexel Heights Fire District
Attorney for Amicus Curiae
Northwest Fire District